

**Interim Guidance Regarding
Service Delivery and
Learning Disability Identification:**

**Post - IDEA Reauthorization,
Pending - Rhode Island Regulation Revision**

Rhode Island Department of
Elementary and Secondary Education

June 2005

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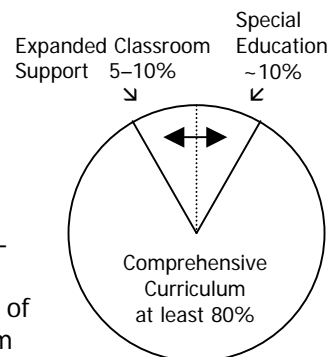
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IDEA was reauthorized as The Individuals with Disabilities Education Improvement Act (still known as IDEA) and signed into law on December 3, 2004. Regarding identification of students with learning disabilities, the law states that districts "shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability ..." In addition, districts "may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures ..." Federal regulations are expected to provide further direction (projected timeline December 2005). Final guidance regarding learning disability determination in Rhode Island will be issued following the revision of Rhode Island's regulations, which will be based on the federal regulations.

The learning disability components in the law reflect the work of the President's Commission on Excellence in Special Education (2000), the Learning Disabilities Summit convened by the Office of Special Education Programs in the summer of 2001, and the ongoing Learning Disabilities Roundtable first convened by the National Center for Learning Disabilities in February of 2002. Guidance offered here draws from these documents as well as the on-going scientific research on which those documents were based, and compares current and potential federal and state regulations in suggesting to educators how they might remain in compliance with the former while preparing to meet the latter. Please note: although the primary focus of this guidance is the learning disability decision, most of the document applies to procedures recommended for ANY school-aged student suspected of having a disability.

SERVICE PROVISION

It must first be emphasized that the new direction described in this guidance rests on a foundation of effective, evidence-based general education. For the proposed approaches to succeed, general education must provide a comprehensive curriculum which results in at least 80% of all students reaching proficiency and expanded classroom-based support which brings 5% to 10% more students to proficiency. 'Proficiency' should be understood to include students' appropriate and successful participation in the general education environment. ALL educators need to become well-versed in the components and instructional strategies of comprehensive literacy, math, and social and emotional learning programs, as well as in the philosophy and strategies of differentiating instruction. All schools need a collegial support system to assist classroom teachers in bringing more students to proficiency. Classrooms and schools that do not yet have these capacities will experience greater challenges in successfully utilizing the approaches described here.

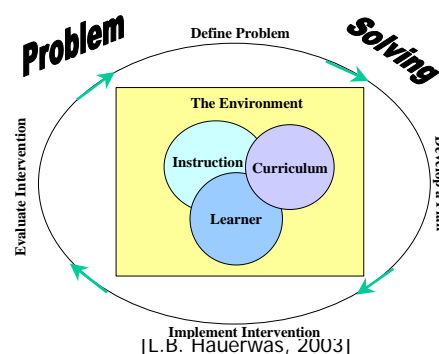


Impacts on service provision from the changes in IDEA, as well as from Rhode Island state law and regulations, have already begun in three areas: A New Vision, A New Mechanism, and a "New" Tool.

A New Vision – support for student learning is being reconceptualized as an expanding circle of support that begins with the teacher and parent and grows to include other people's efforts if needed. Any of a variety of professionals (including special educators) – individually and as members of support teams – may lend their experience and knowledge to help the teacher design what is needed for children to learn within the general education setting. This extended support might be orchestrated through an effective building level support team, which may incorporate functions of a Teacher Support Team as well as problem-solving and intervention support. Documentation of efforts made and their results provides the background needed as additional people enter the circle of support. If instructional needs are found to be complex or intense for a particular child, additional support services may be considered; if a disability is eventually suspected, all the information already gathered provides the basis for determining if any additional assessments are needed in order to decide if the child has a disability. If the child is identified as requiring special education, appropriate and effective instructional approaches have already been identified; services are provided through special educators with the constant aim to bring the student's achievement to a level that can be supported within general education. None of this can occur without the collaboration of parents, general and special educators, administrators and programs.

A New Mechanism – Rhode Island legislation requires schools to provide a Personal Literacy Program (PLP) for every student (including those with IEPs) in elementary grades who is reading below grade level. The Regents' High School Regulations extend through high school the requirement to support students reading below grade level – supports increase in intensity according to degree of student need. Schools are now engaged in trying to provide specifically planned approaches that will improve students' proficiency levels in reading. It is expected that educators will expand the concept to address concerns in other curriculum areas, as well as behavioral concerns, through such plans. For students with IEPs, PLPs in reading and other areas provide the detailed assessments, interventions, timelines and coordination between general and special educators that are needed to improve students' progress toward their goals. (See revised Guidance issued by the Rhode Island Department of Education in Spring 2005)

A "New" Tool – The steps of a problem-solving process are not new. What is new is the focus on aggressively using a problem-solving approach in addressing needs of individuals, classes, schools and districts. Problems are identified (clarified in terms of target and actual performance); strategies are developed to address them; assessments are designed to evaluate progress; plans for who will do what, when and where are devised; plans are carried out; results are evaluated; and the ensuing analysis informs the next round of instruction and intervention. The problem-solving approach is as fundamental to the success of the new direction as are comprehensive curriculum programs. ALL educators must be prepared to utilize the problem-solving approach in various situations, including special education service delivery and progress reporting.



The 'new direction' in service provision, in summary, means intervening in students' learning when their performance first begins to lag, involving a variety of people including the parents in support of classroom teachers' efforts, utilizing problem-solving approaches at individual, class, school and district levels, and documenting both interventions and results for future reference.

SPECIAL EDUCATION DECISION-MAKING: The New Direction Vis-À-Vis Current and Expected Regulations

Referral for Special Education Evaluation – Based on the Suspicion of a Disability:

In the Rhode Island Regulations Governing the Education of Children with Disabilities, there is a clear directive that a student will be "provided with learning experiences appropriate for the child's age and ability levels" (300.541) within the general education program as a prerequisite for consideration of the student as having a learning disability. Further, a team may not decide that a student has ANY disabling condition if "the determinant factor for that eligibility determination is ... lack of instruction in reading or math" (300.534). The reauthorization of IDEA reflects this expectation and takes it further, bolstering general education efforts to provide scientifically-based instructional strategies and interventions for students at risk of falling behind, and allowing teams to determine learning disabilities by considering the results of those activities in describing the student's "response to instruction" - or lack thereof.

The first responsibility of the team convened to consider a referral for special education evaluation is a determination of what additional information may be necessary before it can decide if there is a suspicion of a disability, and therefore a need for a special education evaluation. The team needs to examine carefully all the information it has on hand. The team must judge the sufficiency of the collected evidence on the instruction the student has received, and on the student's lack of response to that instruction and to a sequence of specific interventions. This judgment includes the fidelity of implementation of instruction and interventions. If the evidence is sufficient, the team will have an understanding of the curriculum, instruction and environmental conditions of the student's learning situation, and of the rate at which the student's performance improves with appropriate instruction and interventions, the student's learning and/or performance gap(s), and the intensity of instruction needed for the student's performance to improve.

Curriculum, Instruction and Environmental Conditions – Anyone involved in planning to help a student learn needs to have sufficient knowledge of the general education program to effectively contribute to a discussion of the expectations for this student's performance. Participants also need to be able to review evidence on the ways this student learns most successfully. This evidence is gathered through progress monitoring assessments (see www.studentprogress.org for some examples), documentation of differentiation of instruction and specific supplemental classroom interventions. Similarly, information is needed on what has been learned about the environmental conditions and supports that help this student perform. Finally, interventions provided for the student need to be evaluated for integrity of implementation – were they carried out as designed? Were the designs of sufficient specificity and duration to provide a genuine measure of effect?

Rate – A clear description is needed of the student's educational progress. Participants in planning need to see evidence on what accelerates learning for this student (see above). Given equal opportunity to learn (i.e. fidelity of instruction and appropriate learning supports and conditions), is the student's learning rate significantly less than the rate of typical peers, or of an expected rate? What does it take – or is it projected to take - for this student to learn at the expected rate?

Gaps – Evidence is needed on how unique this student's performance is compared to peers. Is this student's performance significantly different than his/her peers'? In what ways? Or from identified grade level expectations? How much, in what specific areas? Does the student's own performance differ markedly in different areas? In what ways? To what degrees?

Intensity of Instructional Needs – Evidence in this area tells people who are helping with planning for this student how s/he needs to be taught, and what it takes for him/her to be successful. How significantly does what this student needs differ from provision of curriculum and instruction in the general education program, which includes comprehensive evidence-based instruction, differentiation of instruction, supplemental classroom instruction and accommodations and precise measurement of progress?

If questions remain about any of these components, additional evidence is needed before addressing the question of whether a disability is suspected – the team needs to ask for, and may even assist school staff in gathering the additional information.

The team of parents and qualified school personnel needs to answer two questions to determine if there is a suspicion of a disability and need for further evaluation:

(1) Have interventions of appropriate type, progression and intensity been implemented with fidelity?

- Information needed for teams to answer this question includes documentation from multiple instructional/behavioral interventions of: the student's rate of learning; gaps between the student's performance and expectations and within the student's individual performance profile; and intensity of instruction required for the student to learn, all within the context of the student's learning environment.
- If sufficient evidence has not yet been gathered, the team needs to decide what will be done, how, by whom, when, etc., to gather any additional information needed to determine whether or not there is a suspicion of a disability.

(2) Given the student's response to interventions – including rate and gaps of learning, and intensity of instruction needed – do we suspect that the student might have a disability? If not, the team will consult and continue supports within general education. If yes, they will consider if any additional evaluation is necessary.

Special Education Evaluation:

As in the previous step of the process, the team having decided that a special education evaluation is required must first make a determination of what additional information is necessary to decide if there is a disability and a need for special education services. If the student's general education experience and the discussion of the referral have been thorough, there may be no need for additional information, or a need for only an item or two, in order to make this determination. Current regulations require that information used in determining disability come from a variety of sources, and that all information from this variety of sources is documented and carefully considered (300.535).

To make a determination of a learning disability based on response to intervention, the team may need few if any additional evaluative data beyond those presented at the referral stage to make their decision. Additional data might be needed to add depth or detail to existing information on rate, gaps and intensity. A district may choose, in addition to the learning disability determination based on response to intervention, to determine whether there is also a 'severe discrepancy' between a student's ability and achievement. In order for a team to conclude that there is a severe discrepancy, it must make a judgment of a student's 'ability' and 'achievement' levels. This may be done based on the evidence of a student's response to intervention; test scores are not sufficient evidence to judge these levels, and have never been required to make this judgment. Regulations do not require that formal, standardized measures be used, but if so they must be reliable and valid for the purpose used (614 (b) (2), (3)).

The team of parents and qualified school personnel needs to answer this: "What questions remain before we can decide if there's a disability, and what evidence do we need to answer those questions?"

- Information needed as teams prepare to make a decision based on response to intervention include documentation from multiple instructional/behavioral interventions of: the student's rate of learning; gaps between the student's performance and expectations and within the student's individual performance profile; and intensity of instruction required for the student to learn, all within the context of the student's learning environment. Additional evaluations may or may not be needed to obtain this information.
- The team needs to decide what will be done, how, by whom, when, etc., to gather sufficient information to determine whether or not there is a disability.

Disability Determination:

To reiterate, the new direction is based on the expectation that general education provides a comprehensive evidence-based curriculum and support program which results in 80% of all students reaching proficiency and expanded classroom-based support which brings 5% to 10% more students to proficiency. By extension, the new direction expects that only 5% to 10% of students would not reach proficiency and appropriate and successful participation through general education programs, and that these students might require special education. In Rhode Island, the current statewide average is over 20% - many districts identify an even higher percentage of students as disabled, in some every fourth child is determined to have a disability.

Focusing on the learning disability decision, the new direction expects all teams to consider the student's response to instruction and interventions in determining a suspicion of a disability, and ultimately to base the disability determination on it as well. Documentation from an appropriately designed series of interventions provides teams with evidence that indicates the rate at which a student learns, the gap(s) between this student's performance and what is expected as well as within the student's individual performance profile, and the intensity of instruction required for the student to make progress. A learning disability may manifest itself in one or more of the regulatory areas of oral language, reading, writing and math.

Teams choosing to document a severe discrepancy between achievement and ability as an additional part of the learning disability decision may utilize the new direction to do so. Although formal tests and scores have long been pieces of the whole collection of information available to a team, they are not (and never have been) required in order to determine a severe discrepancy. By the time students are considered for special education evaluation, so

much relevant and valid information has been collected that there may be no questions left that require a formal ability or achievement test to answer. Even when used, the role of formal tests shifts from a focus on scores and standard deviations to a focus on diagnostic information gleaned from the student's performance – only relevant portions of tests may need to be administered to answer the assessment questions. Teams should only use a formal test when the assessment questions call for it, not as part of a routine "battery." [It should particularly be noted that the practice which has emerged in some districts of using two test scores and a point spread or formula alone to "determine" severe discrepancy and thus a learning disability is and always has been out of compliance with regulations ("No single procedure is used as the sole criterion for determining whether a child is a child with a disability ... " (300.532)).]

The team should bear in mind that using the new approach with school-aged children is expected to result in a much lower overall percentage of students with disabilities (not just learning disabilities) – perhaps 10% - rather than the current 20% - 25%.

To determine that a child has a learning disability, the team of parents and qualified school personnel needs to answer the following questions:

- (1) Does the evidence from a variety of sources of converging data indicate that the student's needs in one or more of the regulated areas of oral language, reading, writing and math are greater than 90% to 95% of age appropriate peers? Specifically ...
 - a. Is the student's learning rate slower than 90%-95% of age appropriate peers, even with high quality interventions?
AND ...
 - b. Are the student's gaps greater than 90%-95% of age appropriate peers? That is ...
 - Is the student's performance lower than 90%-95% of age appropriate peers ...
AND/OR ...
 - Within the student's own performance, is there a marked gap in different areas?

If the answer to Question (1) - both parts a. AND b. - is "Yes," the team needs to answer the second question:

- (2) After careful review, can we rule out any other possible primary causes for this student's distinct needs?
 - Exclusionary conditions include: hearing, vision, motor, emotional or other health disorder or mental retardation; cultural, environmental, or economic disadvantage; temporary personal or medical condition
 - Other considerations that may or may not be primary causes: student is an English language learner, has had extended absences, repeated change of schools, inconsistent or inappropriate educational program

If the answer to the first two questions is "Yes," the team needs to answer the third question:

- (3) Does the student require special education and related services in order to meet his/her needs? That is ...
 - Is the instructional intensity needed for the student to make progress greater than 90%-95% of the student's age appropriate peers?

If the answer to all three questions is "Yes," the team may determine that the student has a learning disability and requires special education supports and services. The team may choose to make an additional determination that the student has a "severe discrepancy between ability and achievement." The written report must include the basis on which the determination of the learning disability was made. Relevant behaviors observed, educationally relevant medical findings, instructional strategies used and student's response data must also be reported.

Finally, the team needs to decide what will be done, how, by whom, when, etc., to support this student's continued learning (through the IEP process if the student has been found to have a learning disability and require special education support).

Annual Reviews and Reevaluation:

Special education service providers need to utilize the problem solving approach in designing instructional strategies to reach student goals. Timelines need to be set for carrying out the strategies, continuously monitoring progress toward goals, and redesigning instruction to make improved progress in a cyclical process. For many students, this will be carried out through the Personal Literacy Program process. Quarterly progress reports document the progress and/or changes made in interventions. The aim is for the student to exit special education services as soon as possible – exit criteria should be part of every discussion. During the annual review or before, a justification for continued service should be based on evidence from interventions documenting progress or lack thereof, as well as evidence on intensity of instructional needs. There should be an annual discussion focusing on whether there is still a need to continue special education services. In all discussions, members of the school's Expanded Support Team should participate, especially in a functional analysis of the student's current educational setting and progress.

RECOMMENDATIONS FOR DISTRICTS

The first step will be a collaborative understanding of the roles and objectives of a problem-solving model to facilitate the success of ALL learners. Family involvement throughout the process is an integral part of supporting student progress [Note: although the family will have been involved all along, formal special education procedures and timelines – e.g. informed consent, etc. - are initiated when a referral is made for evaluation]. Currently, many students in many schools are not performing proficiently, and the gaps increase as students get older. It is expected that after a few years, schools will have developed their capacity to support diverse needs of students, most students will perform proficiently, and there will be fewer students referred for and served by special education; as this comes to pass, the process described below will be more easily accomplished by all schools.

Prior to Referral - Appropriate staff will have ...	Referral Team – Is there suspicion of a disability?	Evaluation Team – What MORE do we need to know?	Identification Team – Is there a learning disability and need for special education?	Annual Review Team – Is there still need for special education?	Reevalua- tion Team – Is there STILL a disability and need for special education?
<ul style="list-style-type: none"> ➤ provided effective evidence-based general education curriculum, instruction & assessment, in supportive environments ➤ participated in the expanding circle of support to meet the needs of all students ➤ helped assess all students' instructional progress at least quarterly ➤ collaborated to provide interventions, and regularly document fidelity of the interventions and students' response to them. 	<ul style="list-style-type: none"> ➤ help gather and examine all existing evidence on the instruction the student has received and the student's response to interventions (i.e. Personal Literacy Programs (PLPs), Math, Written Language and Social Emotional interventions) ➤ base decision to consider special education evaluation on the sufficiency of evidence on instruction and on the significance of the student's lack of response to multiple interventions – i.e. student learning/ performance gap(s), rate, intensity of instruction needed ➤ special education staff may advise and help general education teachers with additional interventions, if needed ★ <i>For students above second grade, evidence on the instruction the student has received in the past may be insufficient, or the early instruction may clearly have been of low quality. In order to decide if there is a suspicion of a disability, it is of particular importance for the team to be able to review solid evidence of recent, extensive, focused interventions and clear documentation of the fidelity of and the student's response to those interventions.</i> 	<ul style="list-style-type: none"> ➤ determine what additional evidence is needed – if any – to determine if the student has a disability and requires special education services, and plan assessment to obtain that evidence ★ <i>For students above second grade, it is more likely that additional evidence will be required at this point. To more clearly evaluate the student's response to intervention, assessments planned should include further interventions within the general education setting during the evaluation period.</i> 	<ul style="list-style-type: none"> ➤ base decision on evidence of student response to intervention – student learning and performance gap(s), rate – plus additional assessment results if any were needed – choice to also decide severe discrepancy ➤ rule out exclusionary factors ➤ does the student require special education? (intensity of instruction needed) 	<ul style="list-style-type: none"> ➤ need for continued service – base decision on evidence from interventions documenting progress or lack thereof, and intensity of level of support ➤ JUSTIFY new IEP (the aim is for the student to exit special education services as soon as it can be demonstrated that needs have been met and an intense level of support is no longer needed) 	<ul style="list-style-type: none"> ➤ strong focus on justifying need to continue special education services – utilize Expanded Support Team in functional analysis of student's educational setting and progress

Recommended References for additional information on LD identification:

National Reports/Meetings on LD

Learning Disabilities Roundtable (2005). Comments and Recommendations on regulatory issues under the Individuals with Disabilities Education Improvement Act of 2004, Public Law 108-446. Washington DC: U.S. Department of Education, Office of Special Education Programs, Office of Innovation and Development Available at <http://www.ld.org/advocacy/LDroundtable.cfm>

Smith, D & McGinnley, K. (2004). Side by Side comparison of Senate Bill 1248 (as passed on May 13, 2004) and House Bill 1340 (as passed April 30, 2003) and Parts A and B of IDEA, 1997. Available at <http://www.wrightslaw.com/law/idea/sidebyside.06.04.pdf>

National Research Center on Learning Disabilities (January, 2004) Response to Intervention Symposium papers available at <http://nrcld.org/html/symposium2003/index.html>

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Select Publications on Issues in LD Identification:

Special issue of *Learning Disabilities Research and Practice*, 18 (August 2003)

Reschley, D Hosp, J. & Schmied, C. (2003) And Miles to Go: State SLD Requirements and Authoritative Recommendations. Available at: <http://www.nrcld.org/html/research/states/index.html>

Siegel, L. S. (2003). IQ discrepancy definitions and the diagnosis of LD. *Journal of Learning Disabilities*, 36, 2-3.

Speece, D. L., & Shekitka, L. (2002). How should reading disabilities be operationalized? A survey of experts. *Learning Disabilities Research and Practice*, 17(2) 118-123.

Stuebing, K. K., Fletcher, J. M., LeDoux, J. M., Lyon, G. R., Shaywitz, S. E., & Shaywitz, B. A. (2002). Validity of IQ-discrepancy classifications of reading disabilities: A meta-analysis. *American Educational Research Journal*, 39, 469-518.

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Warner, T. D., Dede, D. E.; Garvan, C. W (2002). One size still does not fit all in specific learning disability assessment across ethnic groups. *Journal of Learning Disabilities*, 35(6), 501- 509.

Select Publications Regarding Components of a Response-to-Intervention Approach

Barnett, D., Daly, E., Jones, K. & Lentz, F. E. (2004). Response to Intervention: Empirically based special service decision from single-case designs of increasing and decreasing intensity. *Journal of Special Education*, 38(2), 66-79.

Burns, M., Vanderwood, M. & Ruby, S. (2005). Evaluating the readiness of pre-referral intervention teams for use in a problem-solving model. *School Psychology Quarterly*, 20, 89-105.

Coyne, M. D., Kame'enui, E. H. & Simmons, D. C. (2001). Prevention and intervention in beginning reading: Two complex systems. *Learning Disabilities Research and Practice* 16(2), 62-73.

Deno, S. (2003). Developments in Curriculum-Based Measurement. *Journal of Special Education*, 37(3), 184-192.

Fletcher, J. M., Foorman, B. R., Boudousquie, A., Barnes, M.A., Schatschneider, C. & Francis, D. J. (2002). Assessment of Reading and Learning Disabilities A Research-Based Intervention-Oriented Approach. *Journal of School Psychology*, 40 (1) , 27-64.

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Gresham, F. (2004). Current status and future directions of school-based behavioral interventions, 33(3), 326-343.

Hosp, M & Hosp, J. (2003). Curriculum-Based measurement for reading, spelling and math: How to do it and why. *Preventing School Failure*, 48(1), 10-17.

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Kovaleski, J. F. (2002). Best practices in operating pre-referral intervention teams in Pennsylvania. In A. Thomas & J. Grimes (Eds). *Best practices in School Psychology-IV* (pp. 645-655). Bethesda, MD: National Association of School Psychologists.

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Vaughn, S., Mathes, P. & Linan-Thompson, S. (2005). Teaching English Language Learners At Risk for Reading Disabilities to Read: Putting Research into Practice. *Learning Disabilities Research & Practice*, 20(1) 58-67.

Websites for LD and RTI

National Center on Learning Disabilities www.ncld.org

National Research Center on Learning Disabilities www.nrcl.org

National Center on Student Progress Monitoring www.studentprogress.org

Research Institute on Progress Monitoring www.progressmonitoring.org

Council of Exceptional Children www.cec.org

What Works Clearinghouse www.w-w-c.org

Interventions Central www.interventioncentral.org

Institute of Development of Educational Achievement idea.uoregon.edu

Florida Center on Reading Research www.fcrr.org